

ASSEMBLY BILL

No. 1124

Introduced by Assembly Member Karnette

February 23, 2007

An act to amend Sections 31694, 31694.1, and 31694.2 of the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1124, as introduced, Karnette. County employees' retirement: post-employment benefits.

Existing law permits the board of supervisors of a county or the governing body of a district or other public entity, with the agreement of the board of retirement, to provide for the contribution of funds into a Post-Employment Benefits Trust Account and requires the retirement system to establish the account as part of the retirement fund. Existing law establishes the Post-Employment Benefits Trust Account for the purpose of funding the benefits provided under a post-employment group health, life, or other welfare benefits plan established and maintained by the county or district. Existing law prohibits the use of the assets of the retirement fund for paying the cost of benefits provided through the Post-Employment Benefits Trust Account, but permits the account assets to be invested with retirement fund assets. Existing law requires that the funds in the account be separately accounted on the books of the retirement system. Existing law permits an employer participating in the Post-Employment Benefits Trust Account to expressly delegate specified responsibilities in this regard to the retirement system.

This bill would provide that the retirement system's action to establish the Post-Employment Benefits Trust Account as a part of the retirement

fund is discretionary and not mandatory. The bill would delete the requirement that the retirement system account for Post-Employment Benefits Trust Account funds on the books of the system. The bill would specify that various actions in connection with the Post-Employment Benefits Trust Account be taken in conformance with federal law and the California Constitution. The bill would correct an erroneous cross reference.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 31694 of the Government Code is
2 amended to read:
3 31694. (a) The board of supervisors of a county or the
4 governing body of a district or other public entity may, by
5 ordinance or resolution and with the agreement of the board of
6 retirement, provide for the contribution of funds by the county, a
7 district, or other public entity into a Post-Employment Benefits
8 Trust Account. The retirement system ~~shall~~ *may* establish the
9 Post-Employment Benefits Trust Account as a part of the
10 retirement fund. The Post-Employment Benefits Trust Account
11 shall be established for the sole purpose of funding the benefits
12 provided under a post-employment group health, life, or other
13 welfare benefits plan or plans established and maintained by the
14 county or district, which plan or plans may provide for self-insured
15 coverage or the payment of all or a portion of the premiums on
16 one or more insurance contracts or health care service plan
17 contracts for retired employees of the participating county, district,
18 or other public entity, and their qualified spouses, dependents and
19 beneficiaries.
20 (b) Contributions to the Post-Employment Benefits Trust
21 Account may include the proceeds of debt issued by the county,
22 a district, or other public entity solely for the purpose of funding
23 post-employment health, life, or other welfare benefits.
24 (c) The post-employment benefits provided with the funds
25 contributed to the Post-Employment Benefits Trust Account are
26 in addition to any other benefits provided under this chapter.
27 (d) (1) Except as described in subdivision (b) of Section
28 31694.1, the assets of the retirement fund may not be used, directly

1 or indirectly, to pay the cost of any benefits provided through the
2 Post-Employment Benefits Trust Account *or, except to the extent*
3 *allowed by federal tax law, to pay any direct or indirect cost of*
4 *administering the Post-Employment Benefits Trust Fund.*

5 (2) Except as described in subdivision (c) of Section 31694.1,
6 funds in the Post-Employment Benefits Trust Account may not be
7 used, directly or indirectly, to pay the cost of any other benefits
8 provided under this chapter *or, except to the extent allowed by*
9 *federal tax law, to pay any direct or indirect cost of administering*
10 *the Post-Employment Benefits Trust Fund.*

11 SEC. 2. Section 31694.1 of the Government Code is amended
12 to read:

13 31694.1. (a) The retirement system shall separately account
14 for, ~~on the books of the retirement system,~~ the funds contributed
15 to the Post-Employment Benefits Trust Account by each
16 participating employer and the earnings and expenses related to
17 the investment and administration of those funds.

18 (b) The board of retirement, or a board of investments in a
19 county in which a board of investments has been established
20 pursuant to Section 31520.2, shall have sole, exclusive, and plenary
21 authority and fiduciary responsibility over the investment of the
22 Post-Employment Benefits Trust Account, consistent with Sections
23 31594 and 31595, and as provided for in Section 17 of Article XVI
24 of the California Constitution. The board of retirement or board
25 of investments may invest funds in the Post-Employment Benefits
26 Trust Account with those of the retirement system, *to the extent*
27 *allowed by federal tax laws.* The investment earnings and
28 investment expenses attributable to the investment activity of the
29 Post-Employment Benefits Trust Account shall be accounted for
30 separately from the investment earnings and expenses of the
31 retirement fund.

32 (c) The funds in and investment earnings of the
33 Post-Employment Benefits Trust Account shall be used to pay the
34 reasonable costs related to investment expenses and administration
35 of the Post-Employment Benefits Trust Account. Those expenses
36 shall not be deemed to be an investment or administrative expense
37 of a retirement system under this chapter.

38 (d) The board of retirement, or a board of investments in a
39 county in which a board of investments has been established
40 pursuant to Section 31520.2, may establish rules and procedures

governing the investments and administration of the Post-Employment Benefits Trust Account. The board of retirement or the board of investments shall determine the rate of interest to credit the funds in the Post-Employment Benefits Trust Account.

(e) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized to take any and all actions necessary to establish and administer the Post-Employment Benefits Trust Account in compliance with applicable federal tax laws or other legal requirements.

(f) The board of retirement, or the board of retirement acting jointly with a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, and a participating employer in the Post-Employment Benefits Trust Account shall establish, by written agreement, the respective roles and responsibilities of the retirement system and the participating employer with respect to the administration and investment of the Post-Employment Benefits Trust Account, *consistent with Section 17 of Article XVI of the California Constitution*. That agreement shall include, but is not limited to, funding, distribution, expenditure, actuarial, accounting, and reporting considerations, and any applicable investment parameters. The board may, in its discretion, authorize an employer to transfer assets into or out of the prefunding plan, however any transfer of assets shall comply with the terms of the contract between the employer and the board, satisfy requirements under applicable rules of the Governmental Accounting Standards Board, and satisfy the requirements of ~~Section 115~~ of the Internal Revenue Code. Once the investment parameters are established, the board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole control over the investment activity of the Post-Employment Benefits Trust Account as described in subdivision (b). Upon agreement and authorization of the board of retirement and the governing body of a participating employer, the retirement system may administer a post-employment health, life, or other welfare benefit plan sponsored by the participating employer and funded through the Post-Employment Benefits Trust Account.

(g) In accordance with procedures established in the written agreement described in subdivision (f), the participating employer may elect to terminate participation in the Post-Employment Benefits Trust and instruct the retirement system to either (1) transfer the funds held in the Post-Employment Benefits Trust Account to a successor trustee named by the employer, or (2) disburse the trust assets in accordance with subdivision ~~(h)~~ (i). In addition, the board of retirement may terminate the participation of a participating employer in the Post-Employment Benefits Trust Account if either:

(1) The board of retirement finds that the participating employer is unable to satisfy the terms and conditions required by this article, the rules and procedures established by the board, or the participation agreement between the participating employer and the board of retirement.

(2) The board of retirement elects to terminate the Post-Employment Benefits Trust Account.

(h) If the board of retirement terminates the participation of an employer in the Post-Employment Benefits Trust Account, as described in paragraph (1) or (2) of subdivision (g), the funds attributable to that employer shall remain in the Post-Employment Benefits Trust Account, for the continued payment of post-employment benefits for current and future participants and the costs of administration and investment.

(i) If the board of retirement elects to terminate the Post-Employment Benefits Trust Account, the retirement system shall disburse the funds in Post-Employment Benefits Trust Account in the following order and manner:

(1) The retirement system shall retain an amount sufficient to pay for the post-employment insurance benefits for participants in the post-employment insurance plan or plans provided by the former participating employer.

(2) The retirement system shall retain an amount sufficient to pay reasonable administrative and investment costs described in this section.

(3) After the amounts in paragraphs (1) and (2) have been retained or disbursed, the retirement system shall pay any remaining funds to the former participating employer or employers.

SEC. 3. Section 31694.2 of the Government Code is amended to read:

1 31694.2. An employer who elects to participate in the
2 Post-Employment Benefits Trust Account shall be required to
3 establish, fund, and apply distributions from the Post-Employment
4 Benefits Trust Account, and administer a post-employment health,
5 life, or other welfare benefit plan or plans funded through the
6 Post-Employment Benefits Trust Account, pursuant to applicable
7 federal tax requirements or other legal provisions. An employer
8 may expressly delegate its responsibilities under this section to
9 the retirement system as described in subdivision (f) of Section
10 31694.1, *to the extent allowed by federal tax laws.*